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State of Utah

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FAX COVER SHEET

Date: 11-24-93

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From: Jim Carter

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Denise Drago

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November 23, 1993

Denise Dragoo, Esq.
Fabian and Clendenin
215 South State
P.O. Box 510210
Salt Lake City, Utah 84151

Re: Hidden Valley Coal Company, Notice of Violation No. N93-35-8-1,
ACT/015/007, Folder #5, Emery County, Utah

Dear Denise:

This letter is in response to your November 19, 1993 letter submitted on behalf of Hidden Valley Coal Company ("Hidden Valley"). By that letter, Hidden Valley requests an informal conference and an extension of time for abatement of Notice of Violation N93-35-8-1.

With respect to your request for an informal conference, I have directed Jan Brown to call you to determine the earliest possible date for the conference. You should be aware, however, that a request for an informal conference does not stay the abatement date.

I am not able to grant an extension of time for abatement of Notice of Violation N93-35-8-1 because Hidden Valley's Reclamation Plan provides for seeding only during the months of October and November. Since the NOV requires re-seeding before December 1, 1993, an extension would allow Hidden Valley to undertake actions which are in violation of the terms of its own plan. Accordingly, Hidden Valley must comply with the terms of NOV N93-35-8-1 by December 1, 1993.

In your letter, you assert that the Division has the authority to stay the abatement of NOV N93-35-8-1 because of the Court of Appeal's stay issued for Notice of Violation N91-26-8-2. The Division is aware of the Court's stay and has not taken, and will not take, any action requiring Hidden Valley to abate NOV No. N91-26-8-2. The Court's stay, however, does not preclude the Division from

Page 2
N93-35-8-1
ACT/015/007
November 23, 1993

taking other enforcement action to ensure compliance with Utah's Coal Program. Notice of Violation N93-35-8-1 is an entirely new violation and has no relationship with NOV N91-26-8-2. As you know, Notice of Violation N91-26-8-2 involved Hidden Valley's failure to minimize erosion and seed the outslopes of the road. Conversely, NOV N93-35-8-1 pertains to Hidden Valley's failure to meet revegetation standards on the surface of the road, and explicitly excludes the outslopes of the roads. In addition to involving entirely separate areas of the mine site, the Notices of Violation also involve entirely separate performance standards.

You incorrectly suggest that the two violations are related because both violations may have implications on the running of Hidden Valley's "bond clock". I understand that the "bond clock" may be the motivating factor in Hidden Valley's resistance to the two NOV's, but the Division's position is that the "bond clock" will not become an issue until Hidden Valley requests bond release. The sole issues at trial regarding NOV N91-26-8-2 were whether Hidden Valley failed to minimize erosion to the extent possible and whether it failed to seed the outslopes of the access road as required by the pertinent regulations and the terms of its own plan. Rule R645-301-357 was not plead as an issue in your complaint. It was not raised in your trial briefs, nor was the issue raised or any evidence introduced at trial that in any way involved the running of the "bond clock". Moreover, the "bond clock" issue was not, and is not, ripe for judicial review because the Division has not yet made any determination under R645-301-357. The Division cannot make such a determination until Hidden Valley requests bond release. The "bond clock" is irrelevant to the issue of whether Hidden Valley is in violation of Utah's coal performance standards. When the Division makes a determination on bond release, the issue would then be ripe for review and Hidden Valley would have all legal avenues available to it to contest the the Division's determination.

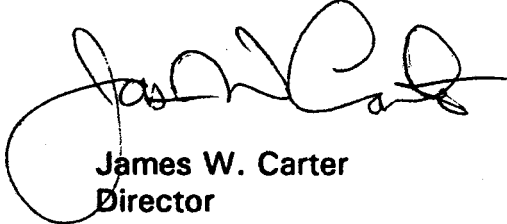
In a letter dated November 12, 1993, Hidden Valley suggests that the Division's proposed husbandry practices could presently be used to make a determination that re-seeding would not restart the "bond clock". The Division is not presently able to use husbandry practices standards because they have not been approved by the Office of Surface Mining and incorporated into the provisions of the Utah State Program. However, the Division will apply the statutes, rules, regulations, and policies in effect at the time Hidden Valley applies for bond release. If the proposed husbandry practices are approved as part of the State Program at the time Hidden Valley applies for bond release, the Division will utilize those practices to rule on the "bond clock" issue. It may be that, at the time bond

Page 3
N93-35-8-1
ACT/015/007
November 23, 1993

release is requested, the Division will be in a position to determine that abatement of NOV N93-35-8-1 did not restart the "bond clock", or restarted it as to less than the entire permit area. The Division is not, however, now in a position to make a determination on the application of future rules to a future request for bond release.

The Division's position is that Hidden Valley must seed the affected areas within the time allotted by the NOV. Since neither re-seeding of the road nor the "bond clock" are issues in the pending litigation, we are unable to see how re-seeding will have any prejudicial effect. Re-seeding now will not adversely affect the potential future availability of husbandry practices standards. In the event re-seeding does restart the "bond clock" reseedling now will begin the running of the period of extended responsibility and will result in earlier bond release than will delay. I must also remind you that failure to abate the NOV within the required time period will require the Division to take further enforcement action. Please encourage your client to re-seed now and argue the "bond clock" issues later.

Very truly yours,



James W. Carter
Director

jbe
cc: Lee Edmonson
L:HIDDENVA.N93

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Document : 05 pages
Time : 03'32"
Mode : G3 NORMAL
Result : T.4.2
